

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,
IN AND FOR THE COUNTY OF MODOC.

Charlie Lee Pabst, Mariam Tabitha Prior,
Golden Frank Prior, substituted herein
in the place and stead of Mariam Tabitha Prior
guardian of the person and estate of Golden
Frank Prior, a Minor,

Plaintiffs,

vs.

Grace A. Firmand and Grace A. Firmand,
Executrix of the last will and testament
of H. H. Firmand, deceased, N. H. Firmand,
and Frank A. Nolan and Celia Nolan, his
wife, and Jennie M. Cambron and Jennie M.
Cambron, guardian of the persons and estates
of Walter, Frankie, Cecil, Ben, Ruth and
Mary Cambron, Minors,

Defendants.

No. 2304

JUDGMENT.

The above entitled action came on regularly for trial the
22nd. day of September, A. D. 1925, before the above entitled Court,
sitting without a jury, Honorable H. D. Burroughs, Judge presiding;
the said plaintiffs being personally present and represented by their
counsel, Messrs. C. S. Baldwin and D. B. Robnett, and the defendants,
Grace A. Firmand, and Grace A. Firmand, Executrix of the last will and
testament of H. H. Firmand, deceased, N. H. Firmand and Frank A. Nolan
and Celia Nolan, his wife, being personally present and represented by
their counsel Messrs. A. K. Wylie and Oscar Gibbons; and a former judg-
ment having been duly entered in said case as against the defendants,
Jennie M. Cambron, and Jennie M. Cambron, Guardian of the persons and
estates of Walter, Frankie, Cecil, Ben, Ruth and Mary Cambron, Minors,
and having become final as against said last named defendants; there-
upon the counsel for plaintiffs offered in evidence a written contract
and agreement signed by said plaintiffs and by said defendants excepting
said defendants Jennie M. Cambron and Jennie M. Cambron, Guardian of
the persons and estates of Walter, Frankie, Cecil, Ben, Ruth and Mary

1 Cambron, Minors, which said contract was a stipulation and agreement
2 settling and adjusting the issues of said case and the rights of the
3 parties plaintiffs and defendants, in and to the waters of Eagle Creek,
4 a natural stream of water located in said County of Modoc, State of
5 California, and said plaintiffs and defendants by stipulation, in open
6 court, stipulated and agreed that the amount of water flowing from the
7 spring or springs, referred to in said written agreement and stipulation
8 for a judgment was four (4) inches measured under a four (4) inch pressure,
9 and said counsel further stipulated that a judgment and decree should be
10 entered in said action in conformity with said contract and agreement,
11 and with said stipulation in open court, and both parties waived Find-
12 ings of Fact, and agreed that said written stipulation should take the
13 place of Findings of Fact.

14 NOW THEREFORE, in consideration of the premises, IT IS HEREBY
15 ORDERED, ADJUDGED AND DECREED as follows:

16 I.

17 That since the commencement of said action the said defendant
18 H. H. Firmand has died and Grace A. Firmand, has been appointed as the
19 Executrix of the last will and testament of said H. H. Firmand, deceased,
20 and has by consent of the parties hereto and by order of the Court here-
21 tofore made been substituted in this action in the place and stead of said
22 H. H. Firmand, deceased.

23 II.

24 That said defendant N. H. Firmand, since the commencement of
25 said action, has by instruments in writing transferred and conveyed all
26 property and rights owned by him in said action, to William Page and Mary
27 Page, his wife, and Jesse Stevens and Nora Stevens, his wife; and the
28 said William Page and Mary Page, his wife, and Jesse Stevens and Nora
29 Stevens, his wife, have by instruments in writing transferred and conveyed
30 all property rights so conveyed to them by said N. H. Firmand, to Frank
31 A. Nolan and Celia Nolan, his wife, and the said Frank A. Nolan and

50 Minors inches = 1 cfs

1 Celia Nolan, his wife are now the owners of the property and rights, and
2 water rights so belonging to said N. H. Finmand, at the commencement of said
3 action; and that since the commencement of said action said Golden Frank Prior,
4 a minor, has reached the age of majority.

5 That said Charlie Lee Pabst and L. N. Pabst, her husband are now
6 the owners and at the time of commencing this action were the owners of the
7 following described lands, situate in the County of Modoc, State of California
8 and particularly described as follows to-wit: The South half of South half of
9 Section 30, North half of North half of Section 29 all in Township 40 North,
10 Range 17 East, M.D.B. & M.

11 That the said Mariam Tabitha Prior and Golden Frank Prior are
12 now the owners of the following described lands, situate in the County
13 of Modoc, State of California and particularly described as follows, to-wit:
14 The North half of Southeast quarter, the Northeast quarter of Southwest
15 quarter, and the lot numbered three (3) of the Southwest quarter of Section
16 19, the North half of Southwest quarter of Section 20, all in Township 40 North,
17 of Range 17 East, M.D.B. & M., the fractional Northwest quarter of the Southeast
18 quarter of Section 20, Township 40 North, Range 17 East, M.D.B. & M.

19 That the said Grace A. Finmand, and Grace A. Finmand, as Executrix
20 of the estate of H. H. Finmand, deceased, is the owner of the following des-
21 cribed lands, situate in the County of Modoc, State of California, and particu-
22 larly described as follows, to-wit: The North half of South half and South
23 half of North half of Section 24, Township 40 North, Range 16 East, M.D.B. & M.,
24 excepting therefrom about 20 acres off the west side of said lands which lies
25 within the limits of the town of Eagleville, Modoc County, California.

26 That said N. H. Finmand and said Frank A. Nolan and Celia Nolan,
27 his wife, are the owners of the following described lands, situate in the
28 County of Modoc, State of California, and particularly described as follows
29 to-wit: The South half of South half of Section 19 and North half of Northeast
30 quarter of Section 30, Township 40 North, Range 17 East, M.D.B. & M.
31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

III.

That the said lands of Mariam Tabitha Prior and Golden Frank Prior, and Charlie Lee Pabst and L. N. Pabst and Frank A. Nolan and Celia Nolan, and N. H. Finmand are riparian to said Eagle Creek, and said creek has two distinct channels which are formed before it reaches the lands of said last named parties, and one or the other of said channels crosses over and thru the lands above described and said lands are by virtue thereof riparian to said Eagle Creek and the forks or branches thereof.

That the said lands of Grace A. Finmand, and Grace A. Finmand, Executrix of the estate of H. H. Finmand, deceased, are not riparian to said Eagle Creek, but said lands have been irrigated from said Eagle Creek for many years last past, thru two ditches leading from the main channel of said creek, one of said ditches being known as and referred to and called the Grider Ditch, and being the most southerly ditch, and the other ditch being known as and referred to and called the Gee Ditch, which supplies the northerly portion of the lands of said last named parties with water for irrigation and also stock and domestic and garden water, and said ditches before entering the lands of said Grace A. Finmand, and Grace A. Finmand, as Executrix of the estate of H. H. Finmand, deceased, pass thru a portion of the town of Eagleville, in said Modoc County and some water is taken from said ditches by the owners of land thru which the same pass, before reaching the lands of said last named parties and the said Grider Ditch also passes thru lands owned by W. U. Scott, and said Grider Ditch, for a distance from the point of diversion, from said Eagle Creek, is used by said W. U. Scott and Grace A. Finmand, and Grace A. Finmand Executrix of the estate of H. H. Finmand, deceased, but that after said Grider Ditch, passes from the Northern boundary of said lands of W. U. Scott, he, the said Scott, has no diverting ditches therefrom.

4.

IV.

That practically all of the lands of Grace A. Finmand, and Grace A. Finmand, Executrix of the estate of H. H. Finmand, deceased, are of an arid character, and are adapted to the growing of agricultural crops such as hay, alfalfa, grain, pasture, fruits and vegetables, and that said lands require artificial irrigation for the maturing and production of said crops, and that said irrigation is chiefly required on said lands during the irrigating season which usually begins about the first of March or April each year and lasts until about the first of July each year, during which period, the principal crops on said lands are irrigated, matured and produced; and after about the first of July each year, it is necessary to irrigate the garden and orchard on said last referred to lands consisting of about two acres, including the lawn and shrubbery, and it is also necessary to have a sufficient amount of water flowing to said place from said creek for stock purposes.

That the said lands of said Grace A. Finmand, and Grace A. Finmand, Executrix of the estate of H. H. Finmand, deceased, have a natural slope and drainage from the western side thereof in an easterly direction, and to the eastern line thereof, and the water diverted from said Eagle Creek to said lands thru said Gee and Grider Ditches, enters upon said lands along the western portion thereof, and is used on said lands by means of various ditches, so as to properly irrigate said lands, and that when there is any surplus or waste water from such irrigation the same will in its natural trend run down to the eastern line of said lands.

V.

It is ordered that as against the plaintiffs in this case and the said defendants N. H. Finmand and Frank A. Nolan and Celia Nolan, his wife, that the said Grace A. Finmand, and Grace A. Finmand, as Executrix of the estate of H. H. Finmand, deceased, shall have the first and superior right during the said irrigation season, which usually begins about the

1 first of March or April each year and lasts until about the first of
2 July each year, and which varies according to the climatic conditions of
3 each season, to divert and use said waters of Eagle Creek thru the said
4 two ditches above described, or thru either of them, 250 inches of the
5 waters of said Eagle Creek, measured under a four inch pressure, and to
6 apply the same to the lands of said Grace A. Finmand, and Grace A. Finmand,
7 Executrix of the estate of H. H. Finmand, deceased, and the crops grown
8 and produced thereon. It being adjudged that said waters are not to be
9 used wastefully and are not to be allowed to run off said lands thru the
10 ditch along or near the north side, of said lands that leads to the lands
11 of E. E. Woodruff and Jennie M. Cambron and others, but that all of said
12 waters are to be confined to the lands of Grace A. Finmand, and Grace A.
13 Finmand, Executrix of the estate of H. H. Finmand, deceased; and that if
14 after applying the same for the irrigation of said last named lands, and
15 the crops grown and produced thereof, if there is any surplus, waste or
16 run off water the same shall be permitted to run to the eastern side or
17 boundary of said land, and said Mariam Tabitha Prior and Golden Frank Prior,
18 whose lands above described lie easterly of the South half of the lands of
19 Grace A. Finmand and Grace A. Finmand, Executrix of the estate of H. H.
20 Finmand, deceased, shall be permitted to construct a drain or waste ditch,
21 along the eastern boundary line of said lands of said Grace A. Finmand, and
22 Grace A. Finmand, Executrix of the estate of H. H. Finmand, deceased, of
23 sufficient capacity to catch and carry and convey the surplus, waste or
24 run off water from the lands of Grace A. Finmand, and Grace A. Finmand,
25 Executrix of the estate of H. H. Finmand, deceased, to the said lands of
26 Mariam Tabitha Prior and Golden Frank Prior, and that said Mariam Tabitha
27 Prior and Golden Frank Prior, may use such waste or overflow water after the
28 said Grace A. Finmand and Grace A. Finmand, Executrix of the estate of H. H.
29 Finmand, deceased, have made all beneficial use thereof, that they are able
30 to make in the irrigation of their said lands; it being decreed that said
31 drain ditch shall be constructed as near as can be done without damage or

1 detriment to the lands of said Grace A. Finmand, and Grace A. Finmand,
2 Executrix of the estate of H. H. Finmand, deceased, as near to the fence
3 along the East boundary of said last named parties lands, as possible, and
4 that the location of said drain ditch along the eastern boundary of the lands
5 of Grace A. Finmand and Grace A. Finmand, Executrix of the estate of H. H.
6 Finmand, deceased, shall be as follows, to-wit:

7 Said ditch shall be constructed on the west side of the East line
8 fence of said Grace A. Finmand, and Grace A. Finmand, Executrix of the estate
9 of H. H. Finmand, deceased, lands parallel with said fence and distant not
10 more than eight feet from said fence, commencing at the northern boundary of
11 said lands and running south along said fence to a point a short distance
12 more than one-fourth ($\frac{1}{4}$) of a mile from said point of commencement, said
13 ditch to be along the line surveyed on the ground by A. M. Green, March 2nd,
14 1924, and from said last named point said ditch shall be constructed thru
15 the fence, and on the east side thereof, and parallel with said fence, and as
16 near said fence as can reasonably be done, to a point where a culvert
17 crosses the County road, all as surveyed on the ground. It being ordered and
18 decreed that said ditch is to be so constructed as to do the least detriment
19 to the lands of said Grace A. Finmand, and Grace A. Finmand, Executrix as
20 aforesaid, and at the same time to be effectual to catch and carry the said
21 waste and run off water from said lands to the lands of Mariam Tabitha Prior
22 and Golden Frank Prior. It being adjudged that said ditch is to be built as
23 near said fence as it can without undermining said fence, and if necessary
24 in some places to dig the ditch a little deeper than it is uniformly, while
25 in other places it may be necessary to simply make a bank on the lower side
26 in order to give said ditch a uniform grade or fall, and for that reason
27 said ditch cannot be constructed of uniform dimensions, but it is ordered that
28 said ditch shall not be any larger than is reasonably necessary to effectually
29 catch and carry the said waste and run off water as aforesaid.

30 It is also ordered that said Mariam Tabitha Prior and Golden Frank
31 Prior shall have the right to construct, maintain, repair and clean said

1 ditch when necessary in order to catch and divert said drain or waste water,
2 but said ditch shall be so constructed, maintained, and repaired in such
3 a manner as to do the least possible damage to the lands of Grace A.
4 Finmand, and Grace A. Finmand, as such Executrix. It being ordered that
5 said Mariam Tabitha Prior and Golden Frank Prior shall not have any right
6 in the said lands, nor shall they in any manner interfere with the use of
7 the water on said Finmand lands as in this judgment provided, but they shall
8 have the right to catch and convey said waste and run off water in said
9 drain ditch, after the said Grace A. Finmand, and Grace A. Finmand as such
10 Executrix has completed the irrigation of their said lands and the crops
11 grown and produced thereon.

12 VI.

13 It is also adjudged and decreed that Jennie M. Cambron and Jennie
14 M. Cambron, Guardian of the persons and Estates of Walter, Frankie, Cecil,
15 Ben, Ruth and Mary Cambron, Minors, are the owners of lands lying easterly
16 of the lands of Grace A. Finmand, and Grace A. Finmand, as such Executrix,
17 and have the right to the water that flows from a spring or springs near
18 the Eastern boundary of the lands of Grace A. Finmand, and Grace A. Finmand,
19 said Executrix, and have used and diverted the waters from said spring or
20 springs to and on the lands of Jennie M. Cambron, et al, for many years.
21 In accordance with the stipulation of the parties in open Court it is further
22 ordered, adjudged and decreed, that the said spring or springs on the lands
23 of Grace A. Finmand and Grace A. Finmand, said Executrix, hereinbefore des-
24 cribed have a normal and natural flow of four inches of water measured under
25 a four inch pressure and no more, and it is further ordered, adjudged and
26 decreed that the said Mariam Tabitha Prior and Golden Frank Prior have no
27 ownership in the waters of said spring or springs, and it is ordered that at
28 all times when they are catching, diverting and conveying the said run off
29 water from the lands of said Grace A. Finmand, and Grace A. Finmand, Executrix
30 as aforesaid, they shall arrange a spill-way over the bank of said drain ditch,
31 or in the bank of said drain ditch, that will cause or permit a quantity of

1 water equal to the normal flow of said spring or springs, namely four inches
2 of water measured under a four inch pressure, to flow under or over or out
3 of said drain ditch or said surplus water ditch, and cause the said spring
4 waters to flow from said drain ditch at the point where the said spring
5 waters have formerly flown from the lands of Grace A. Finmand, and Grace
6 A. Finmand, as such executrix, and shall permit said quantity of water to
7 flow to the lands of Jennie M. Cambron, and Jennie M. Cambron, Guardian of
8 the persons and estates of Walter, Frankie, Cecil, Ben Ruth and Mary Cambron,
9 minors, situated immediately East of the said lands of Grace A. Finmand, and
10 Grace A. Finmand, as such Executrix, but no more than said four inches under
11 a four inch pressure of the waters of said spring or springs, shall be allowed
12 to run thru said drain ditch at the point where the spillway or measuring
13 device is located in said drain ditch for the measuring of said spring water,
14 but they, the said Priors, shall have the right to catch in said drain ditch,
15 and divert, and carry to their lands and there use, all waste or run-off
16 waters from said lands, except said amount of the natural and normal flow
17 of said springs, as aforesaid.

18 VII.

19 It is also ordered and decreed that during the early spring of
20 each year there is usually a freshet season when said Eagle Creek flows a
21 large volume of water and there is more at such time than the said riparian
22 owners can beneficially use, and it is hereby ordered that at such times
23 as there is flowing in said stream an aggregate flow at the point of diversion
24 of said Gee ditch more than 1520 inches of water measured under four inch
25 pressure, then and at such times said Grace A. Finmand and Grace A. Finmand,
26 as such Executrix may, in addition to the said 250 inches of water allotted
27 to her as a first right against the other parties taking such part of the
28 water so in excess of said 1520 inches measured under a four inch pressure,
29 as she may desire, but whenever the aggregate amount of water so flowing in
30 said stream does not exceed 1520 inches measured under a four inch pressure,
31 then the said Grace A. Finmand, and Grace A. Finmand, as such Executrix,

1 shall not divert to exceed 250 inches measured under a four inch pressure.
2 It being decreed that said Mariam Tabitha Prior and Golden Frank Prior
3 shall have the right at all times to all waste or run off water from said
4 Finmand lands excepting said spring or springs water hereinbefore referred
5 to.

6 It being also ordered and decreed that after about the first of
7 July each year when the irrigation season is over for the production and
8 maturing of hay and grain crops, the said Grace A. Finmand and Grace A.
9 Finmand, as such Executrix shall have the right to divert from said Eagle
10 Creek, thru said Gee Ditch, and convey to their said lands sufficient water
11 to irrigate the garden and orchard, and lawn on said lands, and also for
12 stock purposes; and that for the purpose of diverting water through said
13 Gee ditch, for the irrigation of said garden, orchard and lawn, and for
14 stock purposes, it is agreed and understood, that not to exceed twenty-
15 five inches of water measured under a four inch pressure shall be diverted.

16 VIII.

17 It is also ordered, adjudged and decreed that after the said
18 Grace A. Finmand and Grace A. Finmand, said Executrix diverts the said
19 amount of water from Eagle Creek allotted to them by this judgment, that
20 then the balance of the water of said creek so far as they are concerned,
21 shall be permitted to flow on down the stream to the lands of the said
22 plaintiffs and the said defendants N. H. Finmand and Frank A. Nolan and
23 Celia Nolan, his wife.

24 IX.

25 It is ordered and decreed that all of the said lands above des-
26 cribed belonging to Charlie Lee Pabst and L. N. Pabst, her husband, and
27 Mariam Tabitha Prior and Golden Frank Prior, and Frank A. Nolan and Celia
28 Nolan, his wife and N. H. Finmand, are riparian to Eagle Creek, and the
29 East and West fork of said creek; and that the said Charlie Lee Pabst and
30 L. N. Pabst have 320 acres of land that are irrigated from the waters of
31 said Eagle Creek. That Mariam Tabitha Prior and Golden Frank Prior

1 have 240 acres of their said lands that are irrigated from the waters of
2 said Eagle Creek, and the said Frank A. Nolan and Celia Nolan, his wife and
3 N. H. Finmand have 240 acres of lands that are irrigated from the waters of
4 said Eagle Creek, and it is hereby ordered that when said Eagle Creek is
5 flowing sufficient water over and above the amount hereinabove allotted for
6 the lands of said Grace A. Finmand and Grace A. Finmand, said Executrix as
7 hereinbefore provided, the irrigation of the lands of the parties hereto
8 that are riparian to said Eagle Creek, and its two branches, then at such
9 time or times the said parties hereto whose lands are riparian to said
10 Eagle Creek, shall have the right to divert from said Creek or its two
11 branches, such an amount of water as will be necessary for the irrigation
12 of said riparian lands, said water to be used on said riparian lands on a
13 correlative basis and to be used in a manner that will not be wasteful; and
14 that the water of said creek shall be used by said riparian owners in such
15 amounts as the lands of each of said riparian owners bear to the acreage
16 owned by all of said riparian owners, for the necessary and proper irrigation
17 of said riparian lands, and the crops grown and produced thereon; and it is
18 further decreed that as between said riparian owners, there shall not be any
19 priority of right in favor of any or either of them in the waters of said
20 Eagle Creek, but that each of said riparian owners shall share equally in
21 the waters of said stream, so far as their rights in said stream are con-
22 cerned, and in the use of said water of Eagle Creek by each of said riparian
23 owners they shall use an amount of water from said creek for the irrigation
24 of their said lands, that will equal their pro rata that the said lands
25 owned by each of said riparian owners bears to the entire acreage owned by
26 said riparian owners hereinbefore set forth; and it is further ordered and
27 decreed that as between the riparian owners when the flow of water in said
28 Eagle Creek less the amount hereinbefore decreed to Grace A. Finmand and
29 Grace A. Finmand, said Executrix, is not sufficient to properly irrigate at
30 one time all of the lands of said riparian owners, then said riparian owners
31 shall proportionately reduce the amount of water that is being used on their

1 said riparian lands, so that each riparian owner may derive the greatest
2 good from the water so flowing in said Eagle Creek, when said stream is
3 not flowing sufficient water to properly irrigate all of said riparian
4 owners at the same time; and it is also ordered and decreed that when the
5 flow of the water in said Eagle Creek, less the amount so decreed to belong
6 to said Grace A. Finmand and Grace A. Finmand, Executrix of the estate of
7 H. H. Finmand, deceased can be used to a better advantage by rotating be-
8 tween said riparian owners; it is ordered that said riparian owners will
9 rotate to and with each other in the use of said water in said creek, so
10 that each of said riparian owners shall derive the greatest good from said
11 water, for the irrigation of their said lands and crops by reason of said
12 rotation.

13 And it is also ordered and decreed that all water that said
14 Marian Tabitha Prior and Golden Frank Prior shall divert to their said
15 lands from their said drain ditch, so to be constructed upon the lands of
16 Grace A. Finmand, and Grace A. Finmand, Executrix of the estate of H. H.
17 Finmand, deceased, shall be deducted from the share of the waters they
18 shall be entitled to, as one of said riparian owners from the waters of
19 said Eagle Creek, as hereinbefore provided.

20 X.

21 It is also ordered and decreed that any and all surplus or run
22 off water that shall run off the lands of said Frank A. Nolan and Celia Nolan,
23 his wife, and N. H. Finmand, when same are being irrigated shall be per-
24 mitted to drain to the lands of said Charlie Lee Pabst and L. N. Pabst, her
25 husband, so that the lands of Charlie Lee Pabst and L. N. Pabst shall receive
26 the benefit of all waste or run off water, that may drain off the lands of
27 said Nolan and wife and N. H. Finmand when said lands are being irrigated.

28 XI.

29 It is further ordered, adjudged and decreed that as between the
30 said riparian owners, when they or either of them are diverting water from
31 Eagle Creek, or either branch of said Creek for the irrigation of their said

1 lands, as hereinbefore provided, that they may use the same ditches, dams
2 and diversions for getting water from said creek or its branches, that they
3 have been using for diverting the water from said creek or its said branches
4 to their said lands; and it is further ordered and decreed, that when the
5 flow of water in said Eagle Creek gets low, in order to conserve water, and
6 prevent unnecessary seepage or waste, it may be convenient and to their ad-
7 vantage for said Charlie Lee Pabst and L. N. Pabst, to convey water to their said
8 lands thru the ditch known as the "N. H. Finmand Ditch", which ditch is used
9 for conveying water from Eagle Creek to the lands of said Frank A. Nolan,
10 Celia Nolan, his wife, and N. H. Finmand, and it is ordered and decreed that
11 at such times when the flow of water in Eagle Creek gets low, that the said
12 Charlie Lee Pabst and L. N. Pabst, shall have the privilege of conveying
13 water to their lands thru said N. H. Finmand ditch, so long as same can be
14 done without any interference whatever in the irrigation of the said Nolan
15 and N. H. Finmand lands, that are irrigated from said N. H. Finmand ditch.

16 XII.

17 It is also further ordered, adjudged and decreed, that said
18 riparian owners and each of them shall also have the right to divert from
19 said Eagle Creek, or its branches sufficient water for the irrigation of
20 the garden and orchard produced on their said lands, in the same correla-
21 tive proportions, that they can divert water from said stream for the ir-
22 rigation of all their lands and crops produced thereon.

23 XIII.

24 It is further ordered, adjudged and decreed that said Grace A.
25 Finmand and Grace A. Finmand, as such Executrix shall construct and place
26 in her two diverting ditches from said Eagle Creek, permanent and substan-
27 tial measuring devices of some kind to be by her determined, that will
28 properly and accurately measure and show the amount of water running in
29 such ditches, such devices to be of such kind and character that any of the
30 parties hereto may by simple inspection of the same at any time or times,
31 be able to determine what amount of water is there flowing. It being

1 ordered and adjudged that the measuring device in the Gee Ditch shall be
2 placed at or near the head of said ditch, and the one in the Grider Ditch
3 shall be just below the last diversion of Scott from said ditch.

4 XIV.

5 It is also further ordered, adjudged and decreed that the said
6 riparian owners shall likewise place measuring devices in their respective
7 diversions in said Eagle Creek or its branches that will produce the same
8 effect as the Grace A. Finmand measuring devices, and that said Marian
9 Tabitha Prior and Golden Frank Prior shall place a measuring device in said
10 drain ditch at a point after it has left the lands of said Finmands' and
11 before it enters said Prior lands; it is further ordered that said riparian
12 owners shall jointly construct and place in the channel of said Eagle Creek,
13 at the point where the same forks, a measuring device that will show the
14 full flow of said creek at said point, and then each of said riparian
15 owners shall place measuring devices in each and all of their diverting
16 ditches, from said creek, similar measuring devices, so as to show at all
17 times the quantity of water being diverted thru all such diversions.

18 XV.

19 It is further ordered, adjudged and decreed that the said contract
20 of settlement is hereby made a part of this judgment and affirmed by said
21 Court, and also adopted by said Court in lieu of specific Findings, and in
22 lieu of hearing evidence of the issues in said case.

23 XVI.

24 It is further ordered, adjudged and decreed that each and all of
25 the parties to this action and to said contract shall pay and bear their
26 own costs in this case, except that the plaintiffs in said action shall
27 pay one-half ($\frac{1}{2}$) and the defendants in said action shall pay the other
28 one-half ($\frac{1}{2}$) of the expense incurred under the order of the Court for
29 measuring said spring or springs in accordance with the terms of said
30 contract, which expense the Court hereby finds to amount to \$278.30. And
31 it is further ordered and decreed that this judgment and decree shall be

1 binding in all respects upon the heirs, executors, administrators, successors
2 and assigns of each and all of the parties hereto.

3 XVII.

4 It is further ordered, adjudged and decreed that each and all of
5 the parties hereto, their and each of their agents, attorneys, employees,
6 and assigns, be, and they are, hereby perpetually enjoined and restrained
7 from doing anything in contravention of this decree or from in any way,
8 manner or form interfering with, obstructing or impeding any of the other
9 parties hereto in their diversion or use of the waters of said stream in
10 accordance with their rights as herein decreed. It being ordered and decreed
11 that each and all of the parties hereto and their, and each of their agents,
12 attorneys, employees and assigns, are perpetually enjoined and restrained
13 from in any manner interfering with any other party to this action in the
14 exercise of rights and privileges decreed to any such other party by this
15 decree, or from doing anything whatsoever in violation of any provision of
16 this decree.

17 Dated this 5th day of April A.D. 1926

18
19 /s/ H. D. Burroughs

20 Judge Presiding.
21
22
23
24
25
26
27
28
29
30
31